

**Opening Statement of the Honorable Michael C. Burgess, M.D.
Subcommittee on Commerce, Manufacturing, and Trade
Legislative Hearing on 17 FTC Bills
May 24, 2016**

(As Prepared for Delivery)

It has been twenty years since Congress last reauthorized the Federal Trade Commission. Back then, people still carried pagers, dialed into the Internet and were lucky to have one, let alone multiple, email accounts. The world was a different place.

Thus, we are long overdue to revisit the FTC Act and ponder some targeted adjustments.

We are guided by the many new products and services examined in our Disrupters Series of hearings.

Mobile payments and connected devices, for example, pose new policy questions. Some of these questions have inspired ‘technophobia.’ But there is something more frightening than new technology: The prospect of never realizing the jobs and prosperity that result from inventive industry, simply because of fear.

A key takeaway from the Disrupters Series is that if the law lags behind technology, capital shrinks and new products and services will not emerge. Certainty, on the other hand, begets investment—which in turn delivers progress for consumers and help the many Americans still asking, “Where are the jobs?”

Many members of our Subcommittee introduced bills that make general reforms to the Commission’s activities under Section 5 of the FTC Act, and I thank them for their leadership in this area.

The basic FTC framework for policing unfair or deceptive conduct after the fact is a good one. However, the FTC faces tough decisions when it encounters cases presented by new products or services in fast evolving markets.

For example, it must revisit the length of its consent decrees against the speed of business and what other agencies do. 20 year consent decrees easily move away from after the fact remedies to prospective, “Mother May I” regulation.

Other areas need fortification. It is widely understood that informal policy guidelines are helpful do not create liability independent of enforceable rules or statutes. Clarifying that the FTC will not use them to pressure a settlement would provide incremental definition to a company’s liability while maintaining the FTC’s current authority.

Similarly, providing analyses showing why the FTC believes certain investigations reveal no liability would also help define legality under Section 5. Along with policy guidance, previous complaints, and consent orders, this additional information would be another strong signal for the market.

The second theme deals with specific industries or services under the FTC’s jurisdiction. The bills in this category focus on specific conduct that has been observed to harm consumers.

The FTC is likely familiar with many of these issues. The Reinforcing American Made Products Act recognizes the FTC’s work on ‘Made in the USA’ labeling and establishes it as the nationwide standard. Differing standards among states as to what is an American product is not a helpful

approach. This legislation would be especially impactful to a company in my district, Justin Boots, which makes handcrafted leather cowboy boots. The various patchwork state standards of “Made in America” regulations throughout the country have made it difficult for Justin Boots to sell its products in all 50 states, and I look forward to supporting legislation that will unburden this great company from the myriad of red tape imposed on it through these regulations.

This bill is a critical step in making it worthwhile for U.S. manufacturers to make their products here in America. The Consumer Review Fairness Act builds on the FTC’s work in the *Roca Labs* case, which was an enforcement action brought by the FTC against a company which produces a line of weight-loss supplements who allegedly made baseless claims for its products, and then threatened to enforce “gag clause” provisions against consumers to stop them from posting negative reviews and testimonials online. A company should never be in the business of preventing American consumers from speaking honestly.

In summary, the bills we put forward today are designed make some adjustments to ensure that innovation can thrive in order to provide consumer benefits and create jobs.

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